

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #5	CCRB Case #: 201706181	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/25/2017 2:02 AM	Location of Incident: West 125th Street and St. Nicholas Avenue	Precinct: 26	18 Mo. SOL 1/25/2019	EO SOL 1/25/2019	
Date/Time CV Reported Tue, 07/25/2017 3:05 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/31/2017 11:59 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Brabazon	23726	950099	TB DT03
2. POM Carlos Macmaster	22620	953030	TB DT03
3. POM Dwayne Gibbs	07354	957624	TB DT03
4. Officers			Unknown
5. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Linhong Li	31771	952993	TB DT03
2. POM Andrew Fiscante	14145	951735	TB DT03
3. POM Joseph Dellicarpini	12853	960441	TB DT03
4. SGT Erik Easterbrook	00217	941692	TB DT03
5. SGT Evita Murillo	3397	943597	PA UPTU

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Brabazon	Force: Police Officer Kevin Brabazon used physical force against § 87(2)(b)	
B.POM Carlos Macmaster	Force: Police Officer Carlos Macmaster used physical force against § 87(2)(b)	
C.POM Dwayne Gibbs	Force: Police Officer Dwayne Gibbs used physical force against § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	
E.POM Kevin Brabazon	Force: Police Officer Kevin Brabazon restricted § 87(2)(b)'s breathing.	
F.POM Kevin Brabazon	Force: Police Officer Kevin Brabazon used physical force against § 87(2)(b)	
G. Officers	Off. Language: Officers made remarks to § 87(2)(b) based upon race.	

Summary of Complaint

On July 25th, 2017, Lieutenant Matthew Hohl of Transit District 3 reported this complaint to IAB via phone. IAB forwarded the complaint to the CCRB, where it was received on July 31st, 2017.

On July 25th, 2017, at approximately 2:02AM, Transit District 3 Police Officers Kevin Brabazon, Carlos Macmaster, Dwayne Gibbs, and another unidentified officer performed a forcible takedown of § 87(2)(b) at West 125th Street and Saint Nicholas Avenue in Manhattan (**Allegations A-C: Force, § 87(2)(g)** **Allegation D: Force, § 87(2)(g)** **Allegation E: Force, § 87(2)(g)** and then kicked him in the face (**Allegation F: Force, § 87(2)(g)** Officers called § 87(2)(b) a “spic.” (**Allegation G: Offensive Language, § 87(2)(g)**)

There is no material video evidence in this case.

Findings and Recommendations

Allegation A—Force: Police Officer Kevin Brabazon used physical force against § 87(2)(b)

Allegation B—Force: Police Officer Carlos Macmaster used physical force against § 87(2)(b)

Allegation C—Force: Police Officer Dwayne Gibbs used physical force against § 87(2)(b)

Allegation D—Force: An officer used physical force against § 87(2)(b)

The following account of events is undisputed: On July 25th, 2017, as § 87(2)(b) and his friend, § 87(2)(b) exited the A Train at the 125th Street Station located at West 125th Street and Saint Nicholas Avenue in Manhattan, § 87(2)(b) accused § 87(2)(b) of stealing his bag. § 87(2)(b) alerted nearby officers of the alleged robbery. § 87(2)(b) provided the following testimony: § 87(2)(b) and § 87(2)(b) were both heavily intoxicated by alcohol and an unspecified variety of pill when they emerged from the train station. (BR01). As § 87(2)(b) waited to cross the avenue at the corner of West 125th Street and St. Nicholas Avenue, he heard a male voice tell him to stop. § 87(2)(b) saw Police Officers Brabazon, Macmaster, Gibbs, and another officer approach him. One of the officers told § 87(2)(b) to leave and § 87(2)(b) complied. One of the officers asked § 87(2)(b) about the robbery. § 87(2)(b) denied committing the crime. As they spoke, all four officers took hold of § 87(2)(b) s arms. § 87(2)(b) moved his arms and shoulders to shrug the officers off. Less than five seconds after first taking hold of him, all four officers brought § 87(2)(b) face-first to the ground.

§ 87(2)(b) s descriptions of the two officers aside from PO Brabazon and PO Gibbs had very few distinguishing characteristics. § 87(2)(b) described both of these officers as light-skinned males in their 30s who were dressed in uniform. PO Macmaster, PO Dellicarpini, and PO Fiscante all fit these descriptions.

§ 87(2)(b) was ultimately uncooperative in signing HIPAA forms for his medical records from his visit to § 87(2)(b) following the incident. (BR02).

After extensive contact attempts to § 87(2)(b) § 87(2)(b) s attorney for his open criminal case stemming from this incident, she was ultimately uncooperative in coordinating § 87(2)(b) s statement. (BR03).

§ 87(2)(b) provided the following testimony over the phone: Shortly after § 87(2)(b) § 87(2)(b) flagged down officers, some of the officers brought him around the corner from § 87(2)(b) § 87(2)(b) so that § 87(2)(b) could not see him. (BR04-05). § 87(2)(b) did not see whether officers used physical force against § 87(2)(b). Later that morning while § 87(2)(b) was in a room at the Transit District 3 stationhouse, he heard the sound of someone falling to the ground from somewhere outside the room.

PO Brabazon, PO Fiscante, and PO Dellicarpini all provided the following consistent testimony: All three officers denied that a forcible takedown took place at West 125th Street and St. Nicholas Avenue. (BR06-08). § 87(2)(b) flagged down PO Brabazon, PO Fiscante, and PO Dellicarpini and pointed out § 87(2)(b) as the perpetrator of the crime. The officers apprehended § 87(2)(b) without forcing him to the ground. Following § 87(2)(b)'s apprehension, PO Macmaster and PO Li arrived in a police vehicle to transport § 87(2)(b) to the Transit District 3 stationhouse.

PO Macmaster and PO Gibbs testified that they did not witness a forcible takedown at West 125th Street and St. Nicholas Avenue and were not present for § 87(2)(b)'s apprehension. (BR09-10).

PO Brabazon provided the following testimony: Following § 87(2)(b)'s apprehension, PO Brabazon and PO Macmaster brought him to the front desk of the Transit District 3 stationhouse where PO Brabazon began to search § 87(2)(b) (BR06). § 87(2)(b) said, "Don't fucking touch me," and moved his body close to PO Brabazon. PO Brabazon turned § 87(2)(b) § 87(2)(b) around and pressed him against the front desk. § 87(2)(b) began to back-kick PO Brabazon, so PO Brabazon looped his arm under § 87(2)(b)'s left armpit up to § 87(2)(b)'s right arm. At the same time, PO Brabazon placed a hand behind § 87(2)(b)'s head and brought § 87(2)(b) to the ground.

PO Macmaster and PO Gibbs both denied taking part in the forcible takedown, but testified they assisted PO Brabazon in controlling § 87(2)(b) once he was on the ground. (BR09-10).

TRIs prepared by PO Brabazon and PO Macmaster indicate they performed a forcible takedown of § 87(2)(b) inside the Transit District 3 stationhouse. (BR11-12).

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Force: Police Officer Kevin Brabazon restricted § 87(2)(b)'s breathing.
Allegation F—Force: Police Officer Kevin Brabazon used physical force against § 87(2)(b)

§ 87(2)(b) provided the following testimony: Once § 87(2)(b) reached the ground, he squirmed his body. (BR01). PO Brabazon placed a knee on § 87(2)(b)'s back, which restricted § 87(2)(b)'s breathing for five to ten seconds. PO Brabazon took hold of both of § 87(2)(b)'s arms as he did this. § 87(2)(b) attempted to ask the officers if he could sit up because he was having trouble breathing. The officers had no response. While PO Brabazon still had his knee on § 87(2)(b)'s back, § 87(2)(b) attempted to sit up. In response, PO Brabazon kicked § 87(2)(b) in the face. § 87(2)(b) sustained a black eye from PO Brabazon's kick.

§ 87(2)(b)'s arrest photograph captures contusions sustained to his right eye. (BR13). § 87(2)(b) was ultimately uncooperative in completing HIPAA forms for his medical records from his stay at § 87(2)(b) following the incident. (BR02).

§ 87(2)(b) testified that before he flagged down officers, he struck § 87(2)(b) in the eye. (BR04-05).

PO Brabazon provided the following testimony: Once § 87(2)(b) reached the ground, he attempted to turn over. (BR06). PO Brabazon used his arm and body weight to apply pressure to § 87(2)(b)'s right shoulder and placed his knee somewhere near § 87(2)(b)'s head to prevent him from turning over. PO Brabazon could not recall § 87(2)(b) having any trouble breathing. PO Brabazon denied kicking § 87(2)(b) in the face.

§ 87(2)(g)
§ 87(2)(b) PO McMaster did not see anyone place a knee on § 87(2)(b)'s back and PO Gibbs could not recall if anyone placed a knee on § 87(2)(b)'s back. (BR09-10).

Allegation G—Offensive Language: Officers made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) testified that after officers lifted him from the ground, they leaned him against the outer wall of the train station elevator shaft. (BR01). As § 87(2)(b) and the officers waited for a police vehicle, the four officers spoke amongst each other and said things along the lines of, "This spic. He's a hothead." The officers used the word "spic" between three and four times as they spoke amongst themselves. § 87(2)(b) could not remember which officers used the word "spic." During his interview with the CCRB, § 87(2)(b) reported his race as Hispanic.

PO Brabazon could not recall calling § 87(2)(b) a "spic." (BR06). All the other officers interviewed denied using or hearing officers use the alleged racial slur. (BR07-10).

§ 87(2)(g)
§ 87(2)(b)

Mediation, Civil, and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.
- The NYC Office of the Comptroller responded to a request on September 24th, 2018, indicating that no notice of claim was filed by § 87(2)(b) regarding this incident. (BR19).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) (BR15).
- PO Brabazon has been a MOS for seven years, and this is the third CCRB complaint filed against him. (BR16). The previous two complaints generated three allegations, two of which were Force-Physical Force. The CCRB did not substantiate any of these allegations and the NYPD has not imposed any discipline pursuant to these CCRB cases.
- PO Macmaster has been a MOS for six years, and this is the third CCRB complaint filed against him. (BR17). The previous two complaints generated three allegations, two of which were Force-Physical Force. The CCRB did not substantiate these allegations and the NYPD has not imposed any discipline pursuant to these CCRB cases.
- PO Gibbs has been a MOS for three years, and this is the second CCRB complaint filed against him. (BR18). The previous complaint generated two allegations, one of which was Force-Physical Force. The CCRB did not substantiate these allegations and the NYPD has not imposed any discipline pursuant to these CCRB cases.

Squad: 5

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date